

MINUTES

RECLAMATION BOARD/TRLIA SUB-COMMITEE MEETING

MARCH 22, 2007

A special meeting (open session) of the Reclamation Board TRLIA Sub-committee was held on March 22, 2007 beginning at 1:03 p.m. in the Yuba County Government Center, 915 Eighth Street, Board of Supervisors' Chamber, Marysville, CA 95901.

The following members of the Board were present:

Mr. Benjamin Carter, President
Mr. Butch Hodgkins, Vice President
Ms. Lady Bug Doherty, Secretary

The following members of the staff were present:

Mr. Jay Punia, General Manager
Ms. Nancy Finch, Legal Counsel
Mr. Dan Fua, Supervising Engineer
Ms. Lorraine Pendlebury, Staff Assistant

Department of Water Resources staff present:

Mr. George Qualley

Three Rivers Levee Improvement Authority Staff present:

Ms. Mary Jane Griego, Board Member
Mr. Don Logue, Board Member
Mr. Paul Brunner, Executive Director
Mr. Scott Shapiro, Special Counsel
Mr. Ric Reinhardt, Program Manager

Also present (according to sign-in sheet and cards):

Mr. Rex Archer
Mr. Tom Ellis, U.S. Army Corps of Engineers
Mr. Tom Foley, Concerned Citizens for Responsible Growth
Mr. Greg Foster
Mr. Tom Eres, Hofman Ranch
Ms. Frances Hofman
Mr. Jim Lewis
Mr. Bob Morrison, Bender Rosenthal

Mr. Dale Nieschulz
Ms. Jeanette Rice, Rice River Ranch
Mr. Thomas Rice, Rice River Ranch
Mr. Buddy McGarity
Mr. Walt Whitenton
Mr. Seth Merewitz
Mr. Olen Karnes
Mr. Dan Witts
Mr. Chuck Carver
Ms. Joan Sampson
Ms. Diane Fales
Mr. Jeffrey Twitchell
Mr. John Nicoletto

1. ROLL CALL

President Carter brought the meeting to order at 1:03 p.m. All three members of the TRLIA Sub-Committee were present: President Ben Carter, Vice President Butch Hodgkins, and Secretary Lady Bug Doherty.

2.* APPROVAL OF AGENDA

Upon motion by President Carter, seconded by Secretary Doherty, and unanimously carried, the Sub-Committee approved the agenda as presented.

3. STATUS AND REVIEW OF THREE RIVERS LEVEE IMPROVEMENT AUTHORITY (TRLIA) PROJECT

- A. Response to February 26, 2007 public comments on TRLIA compliance with Yuba River South levee permit conditions *(TRLIA and Reclamation Board Staff)*

Mr. Paul Brunner welcomed the Board and introduced several TRLIA staff who would be making presentations. He also advised that materials would be available on their web site for anyone who would like copies of information from the meeting.

TRLIA Counsel Scott Shapiro referred to two documents regarding this agenda item. One is a memorandum which is "Responses to issues raised on February 26, 2007 before the State Reclamation Board Sub-Committee." A copy of this is available for everyone in the audience. The second is a PowerPoint presentation, available on the website, which addresses and explains the following twelve issues raised at the last subcommittee meeting.

These issues are:

- Claim that the February 26, 2007 meeting violated Bagley-Keene;*
- Claim that Three Rivers had worked on the Yuba River levees beyond the authorized time contained within the relevant encroachment permit;*

- *That the public has no confidence in the statements of the U.S. Army Corps of Engineers in regard to the level of protection provided by the Yuba River levee;*
- *Claim that Three Rivers is not qualified to run the program that's being performed;*
- *That Three Rivers has made statements to the public regarding completion and when the levees would be certified, and, to date, those levees have still not been certified;*
- *Claim that Three Rivers has not been truthful in dealing with the State Reclamation Board;*
- *That Three Rivers has been illegally working on the levees during the winter months;*
- *That a significant cut has been made into the Yuba River levee and Three Rivers is hiding that from the State Reclamation Board;*
- *That Three Rivers illegally constructed a detention basin on CalTrans property adjacent to the seepage berm, without an encroachment permit from the State Reclamation Board;*
- *That the Yuba River levee was constructed later than originally planned;*
- *That the acceptance of a permit from the State Reclamation Board is a commitment to perform all of the work contained within the permit, within the time frame of the permit;*
- *And finally, claim that the Yuba River levees are now washing out as a result of the recent rains.*

Upon question from President Carter, Mr. Shapiro stated that "completion" means when the construction is done, not necessarily that the work has been inspected and approved or accepted by the State or the Corps.

Mr. Tom Foley stated that he did not think that TRLIA has been truthful and feels that the Board should be more aggressive in watching them; especially in terms of the missing \$35 million in money TRLIA promised. Vice President Hodgkins pointed out that this \$35 million was actually from bond money and the Board does not control how this money is allocated. President Carter stated that this would be discussed in Item 3B IV, the revised TRLIA Financing Plan.

Mr. Rex Archer questioned progress of work on various permits. He states that much work has not been done that is supposedly completed, and this puts thousands of people at risk for flooding. Mr. Paul Brunner countered that TRLIA stood behind its work.

Discussion followed regarding details of work on several projects.

B. Status and plans for the Phase 4 of Feather River Improvement Program

I. Status of State Review of Hydraulic Analysis (DWR Staff)

Mr. George Qualley of DWR stated that DWR has asked the Corps to look at the model that MBK Engineers used for this analysis. The Corps has promised to look at the model and report back. Overall, Mr. Qualley feels that DWR is comfortable with the methodology that MBK Engineers used.

Mr. Tom Eres of Hofman Ranch stated that he thought there should be a peer review of the analysis, as MBK does, in fact, work for TRLIA. Ms. Frances Hofman wondered what the

levee would mean in regard to her ranch. Mr. Thomas Rice of Rice River Ranch does not feel that samples and data from soil testing have been collected from the proper areas.

II. TRLIA cash flow projection for existing and future Right-of-Way and project expenditures (TRLIA and Reclamation Board Staff)

Mr. Paul Brunner gave a brief recap of the project and schedules. Mr. Bob Morrison, TRLIA Right-of-Way Manager, explained the key steps involved in the right-of-way acquisition. He also explained the condemnation process. He then reported on acquisitions for the various Phases, and at what stage each phase was in.

III. Funding potential from Proposition 1E and/or 84 for Phase 4 Feather River Improvement Program (DWR or Reclamation Board Staff)

Mr. Paul Brunner had a slide showing where, and in what proportion, money was coming in to the TRLIA program. Another slide showed total expenses. Mr. Brunner believes the slides demonstrate that TRLIA will be solvent.

President Carter had a question as to the appraisal value of property. Mr. Morrison answered that analysis is done pre-project, so it assumes that the project is not built; therefore, the property worth is at today's price, prior to the project. President Carter pointed out that by taking control of the land from the landowner, it eliminates the ability to make choices as far as their land use, and that there is some value with regard to that. He also wanted to go on record that landowners need to be fairly compensated.

Ms. Hofman wondered why the Board allows TRLIA to ignore federal guidelines for environmental protection. She feels the 408 environmental work should be done and questions why it has not been. Mr. Scott Shapiro stated that 408 is not an environmental statute; it actually is a section of code that says you can't alter a levee without the permission of the federal government.

IV. Revised TRLIA Financing Plan (TRLIA)

Mr. Scott Shapiro showed a slide summarizing the finance plan to date. He stated that the key elements of their request to DWR, which is pending, is for a 70 percent State share and a 30 percent local share of costs. They have also requested DWR to allocate a 100% State share for the setback levee, due to its regional benefits.

Mr. Shapiro stated that clearly DWR needs to select the TRLIA project, and once selected, TRLIA has great certainty that the money will come and TRLIA will look for either a single agreement or a two-phase agreement.

Vice President Hodgkins questioned TRLIA's ability to fund the project if State funds do not come in. Mr. Shapiro answered that they might be able to fund it; they would have some decisions to make as to whether to pursue the setback levee or go back to the strengthen in place plan.

In answer to a question from Dale Nieschult, Mr. Shapiro explained what "incremental cost" described. It is just the hard cost of doing the work.

Mr. Greg Foster, one of the landowners affected, stated that the project is precluding landowners from ever realizing the full potential of the ground.

Mr. George Qualley explained that DWR's Early Implementation Projects Program is a part of the funding category called State Federal Flood Control System Modifications, and is only for public entities to modify or improve, in some way, State/federal flood control facilities. It is not a general, wide-open program, where anybody can apply for funding. He also pointed out that the setback levee project is the type of project that DWR encourages. An application is being prepared which he expects will be posted on the website by March 26. Once the application is in, there will be a two-step process: (1) will be eligibility screening and (2) applying cost share criteria. DWR is hoping to conclude by early to mid-June. Other funding won't be available until September, as the process has to be done through the bond issues. DWR does have TRLIA's request for funding, but it has not been determined yet.

Mr. Tom Foley stated that there is no commitment from DWR to anyone and there is a potential for default.

V. Report back on maintenance responsibility (TRLIA)

Mr. Paul Brunner stated that the levees they are dealing with that existed before and are a part of the TRLIA project, are part of the system owned by the State and maintained under contract by RD 784, who does the maintenance on the levees. TRLIA is improving approximately 29 miles of the 36 miles maintained by RD 784, and is currently jointly maintained by TRLIA and RD 784. Levees not improved or maintained by TRLIA are maintained solely by RD 784. In the future, there will be a joint oversight by TRLIA and RD 784 and this will continue until TRLIA completes their project. If, when the project is completed, TRLIA were to "go away," transition of responsibility to the appropriate party will be made; most likely to RD 784. RD 784 does get assessments from new development for levee maintenance and also from the county. Under the 218 election, there will be a \$100 fee per home collected. New homes are paying for capital improvement, and both new and old homes will pay for O & M. If 218 does not pass, TRLIA will look at other local funding sources.

In answer to a question from Mr. Rex Archer, Mr. Shapiro stated that RD 784 supports TRLIA's work to develop additional funding for maintenance.

Mr. Tom Harris suggested that monthly status reports come from TRLIA and that they lay out precisely what the plan is for maintenance. Ms. Hofman stated that they are paying \$100 an acre for land that has not flooded for 140 years, and she has been unable to get records from TRLIA on how this was assessed.

Mr. Paul Brunner stated that they have not yet assessed anyone, or proposed assessments on anyone. TRLIA is working with their assessment people to try to establish what benefits there are, where they are, and how people should be assessed.

4. RESPONSE TO CONCERNS EXPRESSED AT THE FEBRUARY 26, 2007 SUBCOMMITTEE MEETING REGARDING COMPLIANCE WITH THE BAGLEY-KEENE ACT

President Carter, in response to concerns expressed at the February 26, 2007 meeting regarding compliance with Bagley-Keene, stated that he takes the responsibility of compliance to the Open Meeting Law very seriousl, and he has asked legal counsel to respond to these allegations. He then introduced Counsel Nancy Finch.

Counsel Finch addressed the four points of complaint regarding compliance with Bagley-Keene that had been raised: (1) adequacy of the notice of contact person; (2) adequacy of the Board's brief agenda description; (3) that the agenda did not clearly notice action items; and (4) that proper public comment opportunities were not provided.

Counsel Finch explained that each point had, in fact, been adequately addressed by the Board in compliance with Bagley-Keene, so there was no violation committed at the February 26 meeting.

President Carter stated that a letter would be drafted to Dr. Smith in response to his concerns; essentially the letter will restate what Ms. Finch had just presented.

5. PUBLIC COMMENTS

Mr. Tom Foley stated that, generally, he has been very happy with the time the Board gives him.

TRLIA Member Griego thanked the Board for conducting the meeting in Yuba City.

Mr. Jim Lewis stated that one issue that is woefully omitted when talking about maintenance is enforcement and protection of the levees from permissible access by motorcycles, four-wheelers, and the like, that jump over the levee, digging ruts in the side.

Mr. Scott Shapiro stated that it is difficult to enforce trespass standards on levees; however, there is now legislation being introduced that would make it easier for RDs to enforce standards.

Ms. Jeanette Rice spoke about the possibility of losing her land due to eminent domain, and that this would put her out of business. Right now the levee setback is almost a half mile away. She asked that the Board put the limit line at only 300 ft. away to save her family farm.

Vice President Hodgkins feels that the Board or Sub-Committee should carefully monitor the funding inflow and outflow to watch what is happening; this way issues can be resolved in a timely manner.

President Carter stated that he is sensitive to where the setback is in relation to local property owners. He would like to avoid using eminent domain and condemnation laws. Secretary Doherty concurred with President Carter. It was agreed that another meeting, in perhaps two

months, should take place to stay abreast of the situation. Mr. Brunner stated he was open to another meeting.

Mr. Rex Archer stated once again the he deemed the levee unsafe.

6. ADJOURN

The Reclamation Board/TRLIA Sub-Committee meeting adjourned at 5:57 p.m.

Dated: _____

Maureen Doherty
Secretary

The foregoing minutes were approved:

Benjamin F. Carter
President